



1 due, Plaintiff sent the I.R.S. a request for an extension, as well  
2 as a check for \$162,109.58. Upon completion of the estate tax  
3 return, Plaintiff concluded that the estate had only owed  
4 \$96,627.69, and was therefore entitled to a refund of \$65,481.89.  
5 Plaintiff then began a protracted series of communications with  
6 the I.R.S., including multiple extensions of time to file. The  
7 I.R.S. ultimately refused to refund the requested amount, claiming  
8 that Plaintiff had not requested the refund in a timely manner.

9 Plaintiff brought suit in this Court pursuant to I.R.C. §§  
10 6511 and 7422, seeking to recover \$65,481.89.<sup>1</sup> The Court had  
11 jurisdiction under 28 U.S.C. § 1346(a)(1).

12 The Government did not dispute that Plaintiff had overpaid,  
13 or the amount by which he had done so. However, the Government  
14 claimed that Plaintiff had not filed a timely request for refund.  
15 Pursuant to Internal Revenue Code section 6511(a), a taxpayer must  
16 make a claim for refund within 2 years of paying a tax, or within  
17 3 years of filing a return, whichever is later. See I.R.C. §  
18 6511(a). Plaintiff did not file his formal refund claim in a  
19 timely manner, but asserted that his communications with the  
20 I.R.S. on behalf of the estate amounted to an "informal claim".

21 In the early stages of this dispute, the Court adopted a  
22 four-part test for determining the adequacy of an informal claim.  
23 See Docket No. 16 at 12. An informal claim is sufficient if it:  
24 (1) "is filed within the statutory period;" (2) "puts the I.R.S.  
25 on notice that the taxpayer believes an erroneous tax has been

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27 <sup>1</sup>Citations to "I.R.C. § \_\_" refer to the Internal Revenue  
28 Code, Title 26 of the United States Code.

1 assessed;" and (3) "describes the tax and year with sufficient  
2 particularity to allow the I.R.S. to undertake an investigation."  
3 Pala, Inc. Employees Profit Sharing Plan & Trust Agreement v.  
4 United States, 234 F.3d 873, 877 (5th Cir. 2000) ("Pala").  
5 Finally, while "an informal claim may include oral communications,  
6 it must have a written component." Id.

7 After twice denying the Government's motions for summary  
8 judgment, the Court held a bench trial on this matter. The  
9 central issue at trial was whether Plaintiff's communications with  
10 the I.R.S. satisfied the third Pala factor. See Findings of Fact  
11 & Conclusions of Law, Docket No. 43, at 6 ("Trial Order"). The  
12 Court found that Plaintiff's telephone calls with I.R.S. Revenue  
13 Officer Nancy Wong, and the letters Plaintiff sent Officer Wong,  
14 were sufficient to establish an informal claim under Pala. Id. at  
15 10.  
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### 17 **III. LEGAL STANDARD**

18 In a suit against the United States relating to the recovery  
19 of a tax refund, the prevailing party may recover reasonable  
20 litigation costs. See I.R.C. § 7430(a)(2). "Reasonable  
21 litigation costs" include "reasonable fees paid or incurred for  
22 the services of attorneys in connection with the court  
23 proceeding." Id. § 7430(c)(1)(B)(iii). The statute defines  
24 "prevailing party" as one which "has substantially prevailed with  
25 respect to the amount in controversy" or "has substantially  
26 prevailed with respect to the most significant issue or set of  
27 issues presented," and which has complied with certain procedural  
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1 requirements set forth in 28 U.S.C. § 2412(d). See id. §  
2 7430(c)(4)(A). However, "if the United States establishes that  
3 the position of the United States in the proceeding was  
4 substantially justified," the other party will not be treated as a  
5 "prevailing party" even where it meets the criteria above. Id. §  
6 7430(c)(4)(B)(i).

7 The Government's position is "substantially justified" if it  
8 is "justified to a degree that could satisfy a reasonable person."  
9 Pierce v. Underwood, 487 U.S. 552, 565 (1988). Thus, even where  
10 the Government does not prevail, its position can still be  
11 considered substantially justified if it has a "reasonable basis  
12 in law and fact." Id. at 565, 566 n.2.

#### 13 14 **IV. DISCUSSION**

15 The sole issue for the Court to determine is whether  
16 Plaintiff was a "prevailing party" as defined in the Internal  
17 Revenue Code. The Government does not dispute that Plaintiff  
18 substantially prevailed with respect to the amount in controversy  
19 or the most significant issue presented, but argues that its own  
20 position was substantially justified. The Court finds that the  
21 Government's position throughout this matter had a reasonable  
22 basis in both law and fact, and was therefore substantially  
23 justified.

24 The Government's legal position was reasonable throughout  
25 this proceeding. The Ninth Circuit has not established a test for  
26 the sufficiency of an informal refund claim, other than to require  
27 that the claim must have some written component. See Yuen v.

1 United States, 825 F.2d 244, 245 (9th Cir. 1987). At the outset  
2 of this proceeding, therefore, the standard governing the dispute  
3 was not clear. The Government urged the Court to follow the  
4 stringent rule set forth by the Fourth Circuit in Miller v. United  
5 States, 949 F.2d 708 (4th Cir. 1991). Under Miller, the written  
6 component of an informal refund claim must be "sufficiently  
7 specific to apprise the I.R.S. that the taxpayer desires a refund  
8 and to pin-point the area of dispute, thereby facilitating an  
9 examination of the claim if appropriate" Id. at 711. The  
10 Government also drew the Court's attention to a Seventh Circuit  
11 ruling which suggests that the informal claim doctrine should be  
12 used primarily to cure technical defects in otherwise-sound refund  
13 claims, such as a clerical error or the failure to sign a form.  
14 See BCS Fin. Corp. v. United States, 118 F.3d 522, 524 (7th Cir.  
15 1997). These are more exacting than the Pala standard.

16 Even after the Court adopted the Pala test to govern this  
17 matter, however, the Government continued to make reasonable legal  
18 arguments. In its Trial Brief, the Government cited cases where,  
19 in similar circumstances, courts had refused to find that  
20 taxpayers had filed informal claims. See Docket No. 35 at 5-6.  
21 Additionally, certain aspects of Pala are ambiguous, leaving room  
22 for different interpretations of what each factor requires.  
23 Although the Court ultimately rejected the Government's arguments,  
24 it cannot conclude that those arguments were anything less than  
25 reasonable.

26 Similarly, the Government's arguments had a reasonable basis  
27 in fact. Pala ultimately tests whether "the Commissioner knew, or  
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1 should have known, that a claim was being made." 234 F.3d at 877.  
2 The Government argued that Plaintiff's communications with Officer  
3 Wong were insufficient because Plaintiff never stated the amount  
4 of the anticipated refund, nor provided the detail necessary for  
5 the I.R.S. to conduct a thorough investigation. After trial, the  
6 Court concluded that the communications in question were more than  
7 adequate to put the I.R.S. on notice of Plaintiff's refund claim.  
8 The Court only reached that conclusion after consideration of  
9 numerous documents and testimony from Plaintiff, his wife, and  
10 Officer Wong. The Government never advanced an unsupportable or  
11 unreasonable theory of the case. Rather, the Court simply  
12 interpreted the evidence differently than the Government did.

13 Plaintiff's arguments about the unreasonable nature of the  
14 Government's position are unavailing. First, Plaintiff argues  
15 that the I.R.S. was unreasonable in denying the refund claim in  
16 the first instance. First Mot. for Atty's Fees, Docket No. 48, at  
17 2 ("Motion").<sup>2</sup> This is immaterial to whether or not the  
18 Government's position in this matter was substantially justified.  
19 Plaintiff also claims that the "I.R.S. was fully informed as to  
20 the exact amount of plaintiff s [sic] refund claim of \$65481.89  
21 from the time plaintiff filed its 706 Return dated 7/30/02." Id.  
22 This too is immaterial, as the Government only argued that the

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24 <sup>2</sup>Plaintiff first moved for an award of attorney's fees  
25 immediately after trial. Docket No. 48. The Court denied that  
26 motion without prejudice because the Government had appealed the  
27 Court's ruling, and the outcome of the appeal might have affected  
whether or not Plaintiff was entitled to fees. Docket No. 54. The  
parties then reached an agreement, pursuant to which the Government  
dismissed its appeal. See Docket No. 58. Plaintiff then brought  
the instant motion, relying on the previously-filed brief.

1 informal claim lacked this information, not that the formal claim  
2 did. Plaintiff concedes this very point in the next paragraph of  
3 his brief. Id. at 2-3. Plaintiff next appears to argue that once  
4 the Court adopted Pala, all of the Government's arguments were  
5 unreasonable. Id. at 3. The Court disagrees for the reasons  
6 described above. Finally, Plaintiff claims that the Government  
7 refused a pre-trial settlement offer after the Court adopted Pala,  
8 and that such rejection was unreasonable. Whether or not the  
9 Government's decision not to settle was reasonable at the time is  
10 a separate inquiry from whether the position it advanced during  
11 this proceeding was substantially justified. Only the latter is  
12 before the Court in the instant motion.

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14 **V. CONCLUSION**

15 For the reasons set forth above, the Court concludes that the  
16 Government's position in this litigation had a reasonable basis in  
17 both law and fact, and was therefore substantially justified.  
18 Plaintiff is therefore not a "prevailing party" for the purposes  
19 of I.R.C. § 7430(a)(2). The Court therefore DENIES Plaintiff's  
20 Motion for Award of Attorney's Fees.

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22 IT IS SO ORDERED.

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24 Dated: July 21, 2008

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26 UNITED STATES DISTRICT JUDGE